

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CENTRAL METALS, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
LANG TENDONS, INC.	:	NO. 99-2025

MEMORANDUM AND ORDER

BECHTLE, J. NOVEMBER , 1999

Presently before the court is defendant Lang Tendons, Inc.'s Motion to Dismiss or, in the Alternative, to Transfer Venue and plaintiff Central Metals, Inc.'s response thereto. For the reasons set forth below, the court will deny the motion.

I. BACKGROUND

Plaintiff, Central Metals, Inc. ("Central Metals") commenced this action against defendant Lang Tendons, Inc. ("Lang Tendons") to recover damages it allegedly sustained as a result of the July 1996 failure of a parking garage cable barrier system installed by Central Metals at a newly constructed garage owned by the Claridge Casino in Atlantic City, New Jersey.¹ As a result of the failure in the metal cable system, a Claridge patron drove

¹ Central Metals entered into a subcontract with Perini/Nugent Joint Venture, the general contractor for the project, whereby Central Metals agreed to supply and install a post tension galvanized cable barrier system at the Claridge parking garage. (Pl.'s Opp. to Def.'s Mot. to Dismiss or Trans. Ven. at 1.) Central Metals then entered into a contract with Lang Tendons, in which Lang Tendons agreed to supply metal cable material and hardware. (Complaint at ¶ 20-28.)

her automobile through the cable, causing her death and the death of her passenger. (Def.'s Mot. to Dismiss or Trans. Ven. at 1 (citing Compl. at ¶ 16).) The Complaint alleges that the metal cable material and hardware sold by Lang Tendons to Central Metals was defective and that Lang Tendons was negligent in supplying material and instructions concerning the cable barrier system. (Def.'s Mot. to Dismiss or Trans. Ven. at 1 (citing Compl. at ¶¶ 20-28).) The accident gave rise to several other proceedings to which Central Metals was a party.² (Pl.'s Opp. to Def.'s Mot. to Dismiss or Trans. Ven. at 3-5.) In these proceedings, Lang Tendons was not joined by Central Metals or by any defendant as a third-party defendant. (Def.'s Mot. to Dismiss or Trans. Ven. at 3.)

On May 28, 1999, Lang Tendons filed a motion to dismiss or, in the alternative, to transfer venue. Central Metals filed its opposition to Lang Tendons' motion on July 2, 1999. Lang Tendons filed a reply on July 20, 1999. On August 6, 1999, Central

² The estates of the deceased women killed in the accident commenced suit in the United States District Court for the District of New Jersey. (Def.'s Mot. to Dismiss or Trans. Ven. at 2.) These cases were ultimately consolidated for discovery and trial purposes. Id. at 3. The New Jersey federal actions were dismissed without prejudice pursuant to representations to the court that an oral settlement agreement had been reached. Id. at 5 n.3. However, no written settlement agreement has been executed and a dispute remains over the terms of the purported settlement. Id. Additionally, two arbitration proceedings were commenced with the New Jersey office of the American Arbitration Association ("AAA") in 1997. Id. at 3. The arbitration proceedings were consolidated by the AAA for trial. Id. at 4. All arbitration claims were settled in January 1999. Id.

Metals filed a supplement to its opposition. For the reasons set forth below, the court will deny Lang Tendons' motion to dismiss, or in the alternative, to transfer venue.

II. LEGAL STANDARD

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court may also consider "matters of public record, orders, exhibits attached to the Complaint and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citations omitted). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted). A complaint is properly dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

Lang Tendons asserts three principal grounds upon which it bases its motion. First, Lang Tendons argues that the court

should apply New Jersey's entire controversy doctrine to dismiss the action. Second, Lang Tendons asserts that Central Metals' commencement of this action should be treated as an improper joinder under Rule 14 and dismissed as untimely. Third, Lang Tendons contends that the court should dismiss the action for improper venue based on forum non conveniens, or in the alternative, transfer it to the District of New Jersey (Camden) under 28 U.S.C. § 1404. The court will address each argument separately.

A. New Jersey's Entire Controversy Doctrine

Lang Tendons asserts that New Jersey's entire controversy doctrine should be applied to dismiss the action. New Jersey's entire controversy doctrine, codified in New Jersey Rule of Court 4:30A, currently requires adversaries to join together all possible claims in a single action.³ Under the entire controversy doctrine, "a party cannot withhold part of a controversy for separate later litigation even when the withheld component is a separate and independently cognizable cause of action." Paramount Aviation Corp. v. Agusta, 178 F.3d 132, 137 (3d Cir. 1999). The doctrine has three purposes: complete and final disposition of cases through avoidance of piecemeal decisions; fairness to parties to an action and to others with a

³ Effective September, 1998, Rule 4:30A was amended to make only claim joinder prospectively mandatory. (Def.'s Mot. to Dismiss or Trans. Ven. at 9 n.4.) Previously, the rule required joinder of all possible claims and parties stemming from an event or series of events in one lawsuit. (Id. at 9; Pl.'s Opp. to Def.'s Mot. to Dismiss or Trans. Ven. at 7.)

material interest in it; and efficiency and avoidance of waste and delay. Id. (citing DiTrollo v. Antiles, 662 A.2d 494, 502 (N.J. 1995)). The doctrine is an equitable one, applied on a case-by-case basis. Id.

Lang Tendons argues that even though this case was commenced in the Eastern District of Pennsylvania, the court should apply New Jersey's entire controversy doctrine to dismiss the case. However, in Paramount, the Third Circuit determined that "the entire controversy doctrine is not the right preclusion doctrine for a federal court to apply when prior judgments were not entered by the courts of New Jersey." Paramount, 178 F.3d at 138. Paramount held that "federal courts should apply the general rule that the preclusive effect of a judgment is determined by the preclusion law of the issuing court." Id. at 135.

In the instant case, the underlying actions were not filed in a New Jersey state court. Rather, they were filed in the United States District Court for the District of New Jersey and with the American Arbitration Association in Somerset, New Jersey. (Pl.'s Opp. to Def.'s Mot. to Dismiss at 7.) The New Jersey federal actions were dismissed without prejudice pursuant to representations to the court that an oral settlement agreement had been reached. (Def.'s Mot. to Dismiss or Trans. Ven. at 5 n.3.) No written settlement agreement has been executed, and a dispute remains over the terms of the purported settlement. Id. On these facts, the court finds that a complete and final

disposition of these cases has not been reached by a New Jersey state court. Consequently, the claim should not be dismissed pursuant to New Jersey's entire controversy doctrine. See Bieg v. Havnanian Enter. Inc., No. CIV.A.98-5528, 1999 WL 1018578 at *2 (E.D. Pa. Nov. 9, 1999) (stating that "[f]ederal law governs the preclusive effect of a prior diversity judgment in a subsequent federal question case").

In addition, although the arbitration took place in New Jersey, it was commenced under the AAA's Construction Industry Arbitration Rules. (Pl.'s Supp. in Opp. to Def.'s Mot. to Dismiss at 6.) Although New Jersey Rule 2A:24-2 provides that parties to an arbitration proceeding "may . . . agree in writing that a judgment, of a court of record, chosen by them shall be rendered upon the award," it does not dictate that an arbitration proceeding is tantamount to a New Jersey Superior Court action governed by the New Jersey Rules of Court. The court declines to apply New Jersey's entire controversy doctrine and will deny Lang Tendon's motion to dismiss on this ground.

B. Untimely Joinder of Third Party Claim

Lang Tendons next argues that Central Metals' commencement of this action must be regarded as an untimely joinder under Rule 14 and dismissed. Rule 14(a) of the Federal Rules of Civil Procedure provides that, at any time after the commencement of an action, a defendant may commence a third-party action against a party who is or who may be liable to him for all or part of the plaintiff's claim against him. Fed. R. Civ. P. 14(a). Leave of

court must be obtained when the third-party complaint is served more than ten days after service of the defendant's answer. Id. Rule 14(a) is permissive, however, and although "it is true that the Federal Rules encourage the joinder of parties where such joinder would appear to avoid multiple actions or unnecessary delay and expense, this practice should not penalize bona fide litigants who have a valid cause of action, choose the forum which they think proper and ask for specific relief." Field v. Volkswagenwerk AG, 626 F.2d 293, 302 (3d Cir. 1980).

Consequently, the court will deny the motion to dismiss on this ground.⁴

⁴ Lang Tendons also argues that it could and should have been joined in the previous actions pursuant to Rule 19, and that because it was not joined, the case presently before the court should be dismissed. (Def.'s Reply at 9-10.) Rule 19 provides that:

[a] person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Fed. R. Civ. P. 19(a). Although Lang Tendons asserts that it "could and should have been joined in the federal actions" (Def.'s Reply at 9) the court will not dismiss the instant action because Lang Tendons was not joined in the action before the United States District Court for the District of New Jersey.

C. Improper Venue

Lang Tendons argues that this case should be dismissed for improper venue based on forum non conveniens under Rule 12(b)(3). In the alternative, Lang Tendons asserts that the case should be transferred to the United States District Court for the District of New Jersey (Camden) under 28 U.S.C.A. § 1404.

Under the principle of forum non conveniens, a court may decline to exercise its jurisdiction even where it is technically authorized. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507 (1947). In Gulf Oil, the Supreme Court announced the private and public interests that courts should consider when analyzing a forum non conveniens challenge. Id. at 508-09; see also DeMateos v. Texaco, Inc., 562 F.2d 895, 899 n.2 (3d Cir. 1977). The private interests a court should consider include:

- (1) "the relative ease of access to sources of proof";
- (2) the "availability of compulsory process for attendance of unwilling" witnesses;
- (3) the "cost of attendance of willing" witnesses; and
- (4) "all other practical problems that make trial of a case easy, expeditious and inexpensive."

Gulf Oil, 330 U.S. at 508. The Court also recognized that "[t]here may also be questions as to the enforceability of a judgment if one is obtained." Id. In weighing the factors, the Court held that "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." Id. The public interests a court should consider include:

- (1) the "administrative difficulties" flowing from court congestion;
- (2) "a local interest in having localized controversies decided at home";
- (3) the interest of having the case heard by the forum familiar with the law that must be applied; and
- (4) the avoidance of unnecessary conflict of law problems or problems in the application of foreign law.

Id. at 509.

Under 28 U.S.C. § 1404(a): "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a).

In deciding whether to transfer an action, the court shall consider the following private and public interests:

The private interests have included: plaintiff's forum preference as manifested in the original choice; the defendant's preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses--but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).

The public interests have included: the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; and the familiarity of the trial judge with the applicable state law in diversity cases.

Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995) (citations and internal quotations omitted). The burden of establishing that the balance of proper interests weighs in favor of transfer rests with the movant. Id. In ruling on a motion to

transfer, "plaintiff's choice of venue should not be lightly disturbed." Id. (citation and internal quotation omitted).

Lang Tendons argues that the case should be dismissed for improper venue or transferred to New Jersey because the construction project and accident took place in New Jersey. Lang Tendons does not contest that Central Metals is a resident of the Eastern District of Pennsylvania. Further, Lang Tendons has not indicated which witnesses or third parties would not be subject to this court's jurisdiction or would not be available for trial if the litigation were conducted in Pennsylvania. Similarly, Lang Tendons has not indicated that any books or records would be unavailable for a trial held in Pennsylvania. Other private factors, such as the convenience of the parties as related to their physical and financial conditions, do not favor either venue.

The public interests to be considered by the court do not weigh in favor of either venue. A judgment in either court would be subject to full faith and credit in either venue. This civil action involves relatively straightforward issues and does not appear to involve any special issues of state law. In conclusion, the court finds no reason to disturb Central Metal's choice of the Pennsylvania venue in this civil action. Thus, the court will deny Lang Tendon's motion to transfer venue, and finds that dismissal on grounds of forum non conveniens is inappropriate.

III. CONCLUSION

For the foregoing reasons, the court will deny Lang Tendons' Motion to Dismiss, or in the Alternative, to Transfer Venue.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this day of November, 1999, upon consideration of defendant Lang Tendons, Inc.'s Motion to Dismiss or, in the Alternative, to Transfer Venue and plaintiff Central Metals, Inc.'s response thereto, IT IS ORDERED that said motion is DENIED.

LOUIS C. BECHTLE, J.